



Frequently Asked Questions: New discriminatory practice prohibitions applicable to k-12 educational programs¹

Issued by: Department of Education, Commission for Human Rights and Department of Justice

House Bill 2 was passed by both bodies of the legislature and signed into law by the Governor on June 25, 2021. Included in [HB 2 are sections 297 and 298](#), Right to Freedom from Discrimination in Public Workplaces and Education.

There has been much discussion about this law and what prohibitions it imposes on public employers, government programs, and schools. The State of New Hampshire and its political subdivisions recognize that they have a duty to ensure that they treat all residents and visitors equally. This means that all employees or individuals who work to provide or administer programs and services on behalf of the State of New Hampshire, including teachers in an educational setting, must continually strive to treat all of those with whom they may come into contact equally and with dignity and respect.

The purpose of these FAQs is to provide guidance to public employers, government program administrators, and school systems as they review their compliance with this new law.

This FAQ document addresses questions that may arise regarding the changes to schools and educational programs contained in RSA chapter 193. Please see separate document that addresses [changes to the New Hampshire Law Against Discrimination, RSA chapter 354-A](#).

Changes Regarding Schools and Educational Programming

1. What are schools prohibited from teaching students?

Schools are prohibited from teaching that one identified group (a group based upon: age, sex, gender identity, sexual orientation, race, creed, color, marital status, familial status, mental or physical disability, religion or national origin) is:

- Inherently superior or inferior to people of another identified group;
- Inherently racist, sexist, or oppressive, whether consciously or unconsciously;
- Should be discriminated against or receive adverse treatment; or
- Should not treat members of other identified groups equally.

In short, do not teach that a person or a group is inherently oppressive, superior, inferior, racist, or sexist. Teach and treat all equally and without discrimination.

2. What do the phrases “inherently superior or inferior” or “inherently racist, sexist, or oppressive” mean?

“Inherent” means characteristics that are natural, biological, or innate, as opposed to characteristics that are merely apparent, accidental, or based on external factors.

¹ House Bill 2, Sections 297 and 298, Right to Freedom from Discrimination in Public Workplaces and Education;

Legal Reference: RSA 354-A:29; RSA 354-A:30; RSA 354-A:31; RSA 354-A:32; RSA 354-A:33; RSA 354-A:34; RSA 193:40.

This new law makes it illegal to teach, train or advocate that a person, because of their membership in one or more identified group(s), is inherently either: (1) racist, sexist, or oppressive, consciously or unconsciously or (2) superior or inferior to people of another identified group.

3. Does the law prohibit teachers from teaching U.S. history?

No. Nothing prohibits the teaching of historical subjects including, but not limited to: slavery, treatment of the Native American population, Jim Crow laws, segregation, treatment of women, treatment of LGBTQ+ people, treatment of people with disabilities, treatment of people based on their religion, or the Civil Rights movement. Nor does anything prohibit discussions related to current events including, but not limited to: the Black Lives Matter movement, efforts to promote equality and inclusion, or other contemporary events that impact certain identified groups.

4. Are schools allowed to teach students historical concepts related to discrimination?

Yes. Schools are allowed to discuss “as part of a larger course of academic instruction, the historical existence of ideas and subjected identified” in the new law. Nothing prohibits schools from teaching about discrimination, including the historical existence of these ideas.

5. A parent or student has complained that certain lessons, subjects, or areas of discussion related to racism have made them uncomfortable. Has the school district violated the Prohibition on Teaching Discrimination?

No. It is important to note that education related to racism, sexism, and other practices or beliefs that have harmed or continue to harm certain identified groups may make students, faculty, or parents uncomfortable. These lessons may encourage or prompt students to reflect upon whether and how racism, sexism, or other practices have or have not affected their lives. Even discussion of historical practices and their lingering impact upon different identified groups can cause this discomfort.

The mere fact that a lesson may make students, faculty or parents uncomfortable does not mean that the school has violated the Prohibition on Teaching Discrimination.

6. Can parents or guardians refuse to allow their children to participate in specific course material?

Yes. Where parents or guardians object to specific course materials, they are encouraged to follow school policies related to RSA 186:11, IX-c dealing with objectionable education material.

7. Does the law apply to public schools?

Yes. All K-12 public schools are subject to this law. This includes charter schools and public academies.

8. Does this law apply to all school activities or just teaching?

The prohibitions apply to all activities carried out by public schools in their role as public schools, including extra-curricular activities that are part of the public school’s work.

The law does not apply to all activities that occur on a public school’s property and does not prohibit public schools or school districts from making physical space available to third parties for events or activities, i.e. a voluntary after-school program but is administered by a third-party organization.

9. Does this law apply to instruction in colleges, universities, or other post-secondary educational institutions?

No for teaching students, yes for staff and volunteer training.

The prohibitions detailed above apply only to instruction of students in K-12 programs. However, this law does apply to trainings for staff and volunteers at colleges, universities, or other post-secondary educational institutions, because these institutions are considered public employers and/or government programs. For questions regarding restrictions on training staff and volunteers by public employers and government programs, find more information [here](#).

10. Does this law apply to trainings for post-secondary school employees or volunteers?

Yes. For questions regarding restrictions on training staff and volunteers in all educational programs, find more information here.

11. What remedies are available to students or parents who believe that a school has violated the Prohibition on Teaching Discrimination?

A student or parent who believes that they have been subject to discrimination may file a complaint with the New Hampshire Commission for Human Rights; a complaint with the New Hampshire Office of the Attorney General; or may file a civil claim in superior court to seek damages or declaratory or injunctive relief.

12. Can an educator's credential be disciplined for teaching these prohibited subjects?

Yes. If an educator is found to have discriminated against an individual or identified group, it is a violation of the educator code of conduct and may result in disciplinary sanction by the state board of education.

13. Can a student or parent file a claim based upon instruction or other conduct that occurred in 2020?

No. Complaints alleging a violation of the new law may only be considered for conduct that occurred after the enactment of that law on June 25, 2021.